IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEALS NO. 26 AND 30 OF 1998

FIRST APPEAL NO. 26 OF 1998.

M/s. Lakshon Electronics Pvt. Ltd., 81/82 Kundaim Industrial Estate, Kundaim, Goa, Through its Director Shri D.P. Dalal. ... Appellant

VERSUS

1. Deputy Collector and S.D.O., Ponda Sub-Division, Ponda, Goa.

2. The Assistant Defence Estate Officer, Colaco Pereira Bldg., 3rd Floor, Dr.Dada Vaidya Road, Panaji, Goa. ... Respondents.

Mr. M.P.Amonkar, Advocate for the Appellant.

Mr. H.R. Bharne, Government Advocate for the Respondents.

FIRST APPEAL NO. 30 OF 1998

1. State of Goa, Through Dy. Collector & S.D.O., Ponda Sub-Division, Ponda, Goa.

2. The Assistant Defence Estate Officer, Near Goa Police Traffic Cell, Swami Vivekanand Road, Panaji, Goa. ... Appellants.

VERSUS

M/s. Lakshon Electronics Pvt. Ltd., 81-82 Kundaim Industrial Estate, Kundaim, Goa. ... Respondent.

Mr. H.R. Bharne, Government Advocate for the Appellants.

Mr. M.P.Amonkar, Advocate for the Respondent.

CORAM: N.A. BRITTO, J.

DATE FOR RESERVING THE JUDGMENT: 2.04.2004.
DATE FOR PRONOUNCING THE JUDGMENT:19.04.2004.

J U D G M E N T:

These appeals are filed by both the parties in L.A.C. No.60/1991 against the Judgment/Award dated 30..8.1997 of the learned District Judge, Panaji.

2. The facts giving rise to the filing of these appeals are that by Notification issued under section 4(1) of the Land Acquisition Act, 1894 (Act, for short) published in Government Gazette dated 13.12.88 the Government acquired about 38,325 sq.m. of land at Kurti, Ponda for the use of 6 TTR (2 STC) and in that was included an area of 2872.25 sq.m. from survey No.65 of Kurti, Ponda belonging to the applicant (appellant in F.A. No.26/98) and the L.A.O. by his Award dated 23.11.1990 awarded to the said applicant compensation at the rate of Rs.40/- per sq.m.

3. Dissatisfied with the said Award of the L.A.O. the said applicant got a reference made under Section 18 of the Act to the District Court, claiming compensation at the rate of Rs.300/- per sq.m. The said applicant has now claimed further enhancement at

the rate of Rs.250/- per sq.m. while the respondents (Appellants in F.A. no.30/98) have prayed for quashing and setting aside the said Award of the learned District Judge dated 30.8.1997.

4. The said applicant (appellant in F.A. No.26/98) in support of the reference had examined its Director Shri Dalal (AW.1), an expert namely AW.2 Architect Sunkhtankar and the Assistant Manager of M/s Matches Goa Pvt. Ltd. who had sold a plot of land of survey No.69/1 admeasuring 505.68 sq.m. by deed dated 8.2.1989 at the rate of Rs.225/- per sq.m.

5. The learned District Judge by placing reliance on the said sale deed dated 8.2.1989 (Exh.AW2/A) enhanced the compensation payable to the said applicant from Rs.40/- per sq.m. to Rs.105/- per sq.m.

6. The first submission made by Shri Amonkar, learned advocate for the applicant is that the provisions of clause fifthly of sub-section (1) of section 23 of the Act were not considered. However, the evidence on record does not support the said submission for it was admitted by the said applicant that as on 13.12.1988 they did not have any intention to set up any unit in the said plot purchased by them

and that they had advertised the plot purchased by them for sale because they had suffered loss.

7. Admittedly, the said applicant had purchased their property by deed dated 5.3.1985 at the rate of Rs.32/- per sq.m. i.e. about three years nine months prior to the date of notification under Section 4(1) of the Act. Admittedly also, the sale deed relied upon is dated 8.2.1989 i.e. after about two months of the date of the said notification and the question is whether the learned Reference Court was justified in using the said sale deed as a guide to fix the compensation for the acquired land. The learned Reference Court by placing reliance on the case of **State of Punjab v. Hans Raj (deceased) through L.Rs.** (1994 BCJ (SC) 909) has considered the said sale as proximate both in terms of distance and time in relation to the date of the said notification. The learned Reference Court further observed that the said plot of the sale deed - Exh.AW.2/A was not a singular plot that was sold by M/s Matches Goa Pvt. Ltd. and that about 11 plots were made by them which must have taken a long time and therefore it could not be said that the said M/s Matches Goa Pvt. Ltd. had taken up the work of development and sold the plots within two months and therefore the sale deed -Exh.AW.2/A was held to be as

genuine document. However, in my opinion, what the learned Reference Court lost sight of is of the fact that the prices in the locality were bound to go upwards at least to some extent after the notification under Section 4(1) of the Act was published. The choice before the learned Reference Court was either to accept the plot of the sale deed (Exh.AW.2/A) as basis for enhancing the compensation or the sale deed of the applicants dated 5.03.1985 by which they had purchased the land about three years nine months prior to the date of notification was to be considered by giving appropriate increase in price.

8. On behalf of the said respondents, Shri Bharne, learned Government Advocate has placed reliance on the case of **Karan Singh and Others v.Union of India** (1997 (8) S.C.C., 186) wherein the Hon'ble Supreme Court has observed that under certain conditions the post-notification transactions of sales of land could be relied upon in determining the market value of the acquired land, one of the conditions being that it must be shown before the Court by reliable evidence that there was no appreciation of the value of land during the period of issue of notification under section 4 of the Act and the date of transaction of sale which is sought

to be relied upon for the purposes of fixing the market value of the acquired land and in case a claimant relies on any post-notification transactions, the burden is upon him to show that the price of the land had remained static and there was no upward rise in the price of the land during the period of issue of notification under Section 4 of the Act and the date of transaction of sale.

9. It was not the case of either of the parties that there were no pre-notification sale deeds available. This was a case where the said applicant itself had purchased the land by sale deed dated 5.3.1985 for a sum of Rs.32/-per sq.m. This was also a case where the said applicant had no intention of setting up the unit for which they had purchased the said land and, on the contrary, the applicant had advertised for sale the said land of the applicant. The learned Reference Court, by relying on the said post-notification sale deed has awarded to the said applicant enhancement from Rs.40/- per sq.m. given by the L.A.O. to Rs.105/- per sq.m. thereby giving to the applicant increase in price of more than 23%. The learned Government Advocate Shri Bharne has placed reliance on the case of **State of M.P. v. Shantabhai (Smt) and others** (1995 Supp (2) S.C.C., 28). It was a case where the land was purchased just

two days prior to the date of notification under Section 4(1) of the Act and the Hon'ble S.C. observed that when the applicant in that case had purchased the property for the purpose of establishing an industry and got the sale deed registered on 4.9.74, it would furnish ipso facto the sole basis for determination of the market value of the selfsame land and that no reasonable and prudent buyer, within two days thereafter, would have paid compensation of Rs.2,27,000 as against Rs.1,08,000. The Hon'ble Supreme Court therefore observed that the High Court had ignored the aforesaid relevant considerations while enhancing the compensation without application of mind on the basis of sale transactions of small bits of other lands.

10. Learned Advocate Shri Bharne has also placed reliance on the case of **Shakuntalabai (Smt) and others v. State of Maharashtra (1996) 2 S.C.C.** 152. This was a case where the notification under section 4(1) of the Act was published on 11.8.1965. The applicants in that reference had purchased the very same land of 20 acres for Rs.10,000/- and the Hon'ble Supreme Court observed that there was evidence or admission on behalf of the said applicants as to the market value commanded by the acquired land itself and therefore there was no need to travel beyond the

boundary of the acquired land. The need to take into consideration the value of the land adjacent to the acquired land or nearabout the area which possessed the same potentiality to work out the prices fetched therein for determination of market value of the acquired land would arise only when there is no evidence of the value of the acquired land. In a case where the evidence of the value of the acquired land itself is available on record, it is unnecessary to travel beyond that evidence and consider the market value prevailing in the adjacent lands (emphasis supplied). The Hon'ble Supreme Court reiterated the principle that when the owner himself had purchased the land under acquisition, the consideration mentioned in the sale deed would form the basis to determine the market value.

11. As already stated the market price of the land of the applicant was available on record and not only that the said applicant had even put up its land for sale and being so the learned Reference Court ought to have assessed the market value of the acquired land based on the price mentioned in the sale deed by which the applicant had purchased the same and then by giving consequential increase which is now widely accepted to be 10% per year. The said increase at 10% over Rs.32/- works out to Rs.44/- per sq.m. This

shall now be the compensation payable to the said applicant with other consequential statutory benefits.

12. In view of the above, the appeal of the applicant (F.A. No.26/98) is hereby dismissed. The appeal of the respondents (F.A. No.30/98) is partly allowed and the market price payable to the said applicant is now fixed at Rs.44/- per sq.m. with all consequential statutory benefits. Considering the facts, there will be no order as to costs.

N. A. BRITTO, J.

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